

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**MCKINLEY AIR, INC.**

**Employer**

**and**

**Case No. 8-RC-16263**

**TEAMSTERS LOCAL 348, AFFILIATED WITH INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**Petitioner**

**MCKINLEY GROUND SERVICES, LLC**

**Employer**

**and**

**Case No. 8-RC-16264**

**TEAMSTERS LOCAL 348, AFFILIATED WITH INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS**

**Petitioner**

**DECISION AND DIRECTION OF ELECTIONS**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing<sup>1</sup> was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

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<sup>1</sup> Since the petitions involved certain issues which were coextensive in nature and in order to avoid unnecessary costs or delays, these cases were consolidated for hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>
3. The labor organization involved claims to represent certain employees of the Employers.
4. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of McKinley Air, Inc. constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

*All full-time and regular part-time line service technicians employed by the Employer at its facility located at the Akron-Canton Airport, North Canton, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.*<sup>4</sup>

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<sup>2</sup> The Parties have filed briefs which have been carefully considered.

<sup>3</sup> The Employers and the Petitioner stipulated in Board Exhibits 2(A) and 2(B) that the Employers meet the Board's monetary jurisdictional standards. In addition, the Employers provided additional documents, Exhibits 3(A) and 3(B), which support a determination that the Employers fall within the Board's jurisdiction and not that of the National Mediation Board. In addition, in McKinley Air Transport, Inc., 227 NLRB 276 (1976) the Board asserted jurisdiction over an employer who appears to have a predecessor to the Employers involved herein

<sup>4</sup> The bargaining unit is consistent with the stipulation executed by the Petitioner and McKinley Air, Inc. in Board Exhibit 2(B). The petition originally included "[a]ll line service and lineman." At the hearing, the Petitioner amended the petition by changing this to "line service technicians."

The following employees constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for McKinley Ground Services, LLC:

*All full-time and regular part-time ground handlers employed by the Employer at its facility located at the Akron-Canton Airport, North Canton, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.*<sup>5</sup>

## **I. FACTS**

### **A. McKinley Ground Services, LLC (8-RC-16264)**

McKinley Ground Services, LLC (“Ground Services”) is an Ohio limited liability company engaged in a fixed-base operation, providing ground support services for commercial, corporate, and privately-owned aircraft from its facility located at the Akron-Canton Airport, North Canton, Ohio, the only facility involved. Ground Services employs approximately 5 employees in the unit found appropriate herein.

The Petitioner seeks to represent a unit of ground handlers. Ground Services contends that Jeffrey Cook is a supervisor as defined in Section 2(11) of the Act, and thus should be excluded from the unit. The Petitioner contends that Cook is not a supervisor as defined in the Act, and should thus be included in the petitioned-for unit.

Ground Services operates on two shifts: 5 a.m. to 2 p.m. and 2 p.m. to 11 p.m. On average, two ground handlers work each shift, although the number can change depending on the workload. Ground handlers have a variety of duties. During the winter, their primary responsibility is aircraft de-icing. They also provide lavatory

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<sup>5</sup> The bargaining unit is consistent with the stipulation executed by the Petitioner and McKinley Ground Services, LLC, in Board Exhibit 2(A). The petition originally included “[a]ll ground service workers.” At the hearing, the Petitioner amended the petition by changing this to “ground handlers.”

services, water service, air starts, baggage handling, aircraft engine starts, stair truck operation, and other labor.

Troy Brindack is the manager of Ground Services, and has served in that position for about four years. Prior to that, he was the assistant manager of Ground Services. Don Armen is the president of Ground Services.

Brindack testified that Cook has been employed for 1 ½ to 2 years.<sup>6</sup> Cook's duties and responsibilities include directing the ground handlers during Ground Services operations. He is authorized to hire, suspend, discharge, discipline and recommend promotion. Cook earns \$10 per hour, whereas ground handlers earn from \$8 to \$9 per hour. Cook works only the second shift. If problems occur during the first shift, ground handlers are expected to contact Cook, and if he is unavailable, to contact Brindack, who can be reached by pager or telephone if he is not on the premises.<sup>7</sup>

Brindack testified that Cook has the authority to hire ground handlers and that he has hired two ground handlers: Steve Flaughers, who remains employed by Ground Services, and Chad Tadaró, who worked during only the summer months and is no longer employed by Ground Services. Flaughers and Tadaró submitted standard paper applications to Ground Services. Cook reviewed the applications, called them in for interviews, and hired them. Brindack did not meet Flaughers or Tadaró before they were hired and played no role in their hiring. Brindack was out of town and thus unavailable when Tadaró was hired, but was available when Flaughers was hired. Brindack hired every other ground handler currently employed by Ground Services, including at least three since Cook has been classified as a supervisor.

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<sup>6</sup> Brindack was the only witness who testified in case 8-RC-16264.

<sup>7</sup> Brindack stated that he spends about 40% of his workday on Ground Services' premises. Brindack has no set hours, and on any given day could be on Ground Services' premises at any time between 5 a.m. and 11 p.m.

Brindack testified that Cook has the authority to discipline and suspend ground handlers and that Cook has disciplined and suspended former ground handler Josh Howard. Cook gave Howard a verbal warning for excessive tardiness, as reflected in a disciplinary warning notice, signed by both Cook (as supervisor) and Howard on March 30, 2001.<sup>8</sup> Cook gave Howard a written warning and seven-day suspension for continued tardiness, as reflected in a disciplinary warning notice dated April 9 and signed by both Cook (as supervisor) and Howard. Brindack testified that he was not aware of Josh Howard's tardiness until Howard received the written warning and was suspended. Further, Brindack testified that he has disciplined two employees and has not suspended any employees since Cook has been classified as a supervisor.

**B. McKinley Air, Inc. (8-RC-16263)**

McKinley Air, Inc. ("McKinley Air") is an Ohio corporation engaged in a fixed-base operation, providing aviation services for commercial, corporate, and privately-owned aircraft from its facility located at the Akron-Canton Airport, North Canton, Ohio, the only facility involved. McKinley Air employs approximately 16 employees in the unit found appropriate herein.

The Petitioner seeks to represent a unit of line service technicians. McKinley Air contends that James Carrick, Christopher Middleton, Robert Branch, Randolph Hershey and Donald Mikes are supervisors as defined in Section 2(11) of the Act, and thus should be excluded from the unit. The Petitioner contends that Carrick, Middleton, Branch, Hershey and Mikes are not supervisors as defined in the Act, and should thus be included in the petitioned-for unit.

Line service technicians perform a variety of duties, which include refueling aircraft, supplying aircraft with ground power units, towing and tugging of aircraft,

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<sup>8</sup> All dates are in 2001 unless otherwise indicated.

receiving incoming aircraft, marshalling aircraft to parking spots, making first contact with pilots and passengers, and contacting Ground Services if its services are needed. Brindack testified that line service technicians generally earn between \$8.50 and \$9.00 per hour.

Line service technicians work three shifts. The first shift works from 5:30 a.m. until 2:00 p.m. The second shift works from 2:00 p.m. until 10:30 p.m. The third shift works from 10:30 p.m. to 7:00 a.m. McKinley Air places three to four line service technicians and one to two line supervisors on the first and second shifts. One line service technician works on the third shift. No line supervisors work on the third shift.

The first-shift line supervisors are Carrick and Middleton.<sup>9</sup> Middleton works Sunday, Tuesday, Wednesday, Thursday and Saturday. Middleton testified that he was hired as a line service technician in about November of 2000 and was promoted to line supervisor in about December 2000 or January.<sup>10</sup> Middleton currently earns \$9.75 per hour. Carrick works Monday, Tuesday, Thursday and Friday. Carrick was hired as a line service technician in about 1994. He has been a line supervisor since about 1998 or 1999. He earns \$10.00 per hour.

Branch and Mikes are the line supervisors on the second shift. Branch works Monday through Friday. He was hired as a line service technician in October 1999. He was promoted to line supervisor in about November 2000 after serving as a part-time supervisor for about one month. Branch earns \$10.00 per hour. Mikes works as a line supervisor on Saturday and Sunday, and is therefore classified as a “part-time” line supervisor, although he is a full-time employee. Mikes has been employed by McKinley Air intermittently since at least 1996. Brindack testified that he did not know when

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<sup>9</sup> When two line supervisors work the same shift on the same day, the line supervisor with greater seniority takes the lead.

<sup>10</sup> The record does not conclusively establish when Middleton actually became classified as a line supervisor.

Mikes was most recently hired, but stated that Mikes' most recent stint as part-time line supervisor began in about June or July. The record does not establish Mikes' wage rate.

Hershey works the last two hours of the first shift and the first six hours of the second shift from Sunday through Thursday. Hershey earns \$9.75 per hour. He is a line supervisor for about six hours per week. He was hired as a line service technician in about 1998, and has been a line supervisor since about February or March. He has also performed a training function since about February or March. Hershey testified that his work in the training position is unconnected to his work as a line supervisor. Hershey primarily trains and tests line service technicians regarding safety issues and proper procedures, specifically: "...anything involved with the aircraft, safety around the aircraft, safety on the ramp, how to fuel planes, the proper procedures to follow in fueling aircraft."

Hershey also testified that both the FAA and McKinley Air require that line service technicians be given certain tests. Hershey administers and grades the written tests. If the results are below a certain level, he goes over the test with the employee and makes sure they understand why their answers were incorrect. If the results are "really bad," Hershey administers the test again. Hershey testified that he does not evaluate employees in his training capacity. The test results are placed in each individual's file. He further testified that the airlines audit McKinley Air's books outlining fueling procedures to make sure they are up-to-date. Hershey also conducts airline tests for McKinley Air employees. He observes McKinley Air employees working at a particular airline and "signs them off" if they are doing the job correctly. In order to sign off on an employee working at an airline, that airline must certify the trainer. Hershey is currently certified by three airlines. Another McKinley Air employee, Dan Ryan, certifies employees on the rest of the airlines. Hershey has never taken adverse action against an employee in his training capacity.

The record indicates that the line supervisors also perform the work of the line service technicians while engaged in their line supervisor functions. Branch testified that he spends “a hundred percent” of his time doing line service technician work. Hershey testified that, in his training capacity, 80-percent of his work is clerical and 20-percent is “actually getting out there and helping the guys.” Hershey later testified that over all, 25-percent of his time is in training versus 75-percent out in the field. Middleton testified that 75-percent of his time is spent actually doing line service technician work, while 25-percent of his time is spent overseeing the work of the line service technicians. Carrick testified that he spends 90-percent of his time doing the work of a line service technician.

Brindack has been the general manager of McKinley Air for about one year.<sup>11</sup> He testified that he spends approximately 60% of his work day at McKinley Air.<sup>12</sup> Brindack testified that during the period from 1994 to 1997, McKinley Air employed him as a part-time line service technician, part-time line service technician/part-time supervisor, full-time line service technician/part-time supervisor, and full-time supervisor.

Brindack testified that when he was a line supervisor, from 1994-1997, he hired line service technicians. He testified that he hired “an entire crew over time,” and remembered two names: Jeff Burton and Ryan Burnett. He added that “[t]here was more than that but there was a bunch of part-time college kids...that worked like for a summer then left.” Brindack did not need the approval of anyone else in order to make the hires. Brindack later testified that the employees he hired primarily performed the work of the current line service technicians, but also performed work currently performed by Ground Services’ ground handlers.<sup>13</sup> Brindack was initially hired by Jim Hermann, who was McKinley Air’s first-shift line supervisor at the time.

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<sup>11</sup> Other management officials of McKinley Air are Don Armen, president, and Bob Dexter, vice president.

<sup>12</sup> Brindack testified in case 8-RC-12624 that he spends about 40% of his work day at Ground Services.

<sup>13</sup> At the time, McKinley Air also performed ground services, and Ground Services did not exist. Brindack testified that Ground Services was formed about 1997.



Brindack testified that the five current line supervisors have the authority to hire line service technicians. None of the line supervisors have hired employees since Brindack has been general manager. The record indicates that Middleton, Hershey, Branch and Mikes have never hired employees. Middleton, Hershey and Branch testified that employees have been hired on their shifts since they became line supervisors, but that they were not involved in the hiring process.<sup>14</sup>

Carrick has been involved in the hiring of two line service technicians – Richard Donze and Greg Carr – before Brindack was general manager. Employer's exhibit 5 is Donze's resume. There is a handwritten notation in the upper right-hand corner that states "[i]nterviewed w/ Laura + Jim Carrick." Employer's exhibit 6 is the last page of Donze's employment application. At the bottom of the page is a notation stating "hired by Carrick 8/21/00." Carrick testified that he hired Donze shortly after he became a supervisor about 2 ½ to 3 years ago. At the time, McKinley Air had no general manager.<sup>15</sup> McKinley Air's president Don Armen asked Carrick if he could "interview people and do stuff like that, do the scheduling and so forth because...he was too busy and didn't want to have to mess with it. So I was involved in interviewing people." Donze was scheduled for an interview but Armen was not in, so Carrick interviewed him. Later that day Carrick recommended to Armen that McKinley Air not hire Donze. Armen disagreed and instructed Carrick to hire Donze. Carrick then called Donze and informed him he was hired.

Carrick hired Carr around the same time period that Donze was hired. Armen asked Carrick to interview Carr. Carrick testified: "And we were pretty short of people at the time. So when [Carr] came in – uh, Mr. Armen wasn't there, for whatever reason.

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<sup>14</sup> Middleton, who is a line supervisor on the first shift, stated that one employee had been hired on his shift. Branch, who is a line supervisor on the second shift, stated that one employee had been hired on his shift. Hershey, who also works the second shift, stated that more than one employee had been hired on his shift, but did not know how many.

<sup>15</sup> The record does not indicate how long McKinley Air was without a general manager.

And I thought we – I interviewed him. And we needed the people. So I went ahead and told him that he was hired and when to start.” Carrick testified that since Brindack became general manager, he has not been involved in the hiring of employees. However, no manager has told Carrick that he no longer has the authority to hire.

Brindack testified that all five line supervisors have the authority to suspend line service technicians. The record does not indicate that any of the line supervisors have ever suspended an employee.

Brindack testified that all five line supervisors can recommend promotion. Brindack initially testified that Mikes recommended the promotion of line service technician Murray Anderson in August, and that Brindack responded that he would take the recommendation under advisement. Brindack later clarified that Mikes “promoted” Anderson in the sense that he said good things about him. Anderson, who is no longer employed by McKinley Air, did not receive a promotion or raise.

Middleton testified that Carrick and Jonathon Jones, a former line supervisor, had recommended that he be promoted to line supervisor.<sup>16</sup> On the other hand, Carrick testified that he has never recommended the promotion of any employee, including Middleton. Rather, Brindack informed Carrick that Middleton was going to replace Jones as line supervisor. Carrick expressed his reservations about Middleton becoming a line supervisor because of Middleton’s relative inexperience. Middleton was promoted to line supervisor anyway.

The record indicates that Armen makes all final decisions on raises. Carrick testified that, as a line supervisor, he recommended that certain line service technicians be given raises because of their qualifications and abilities. Carrick testified as follows:

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<sup>16</sup> Employer’s exhibit 2 is a letter from Middleton to Armen and Brindack requesting a raise, dated August 8. The letter states that on December 19, 2000, Carrick, Jones and vice president Bob Dexter approached Middleton and asked him to consider accepting a position as a supervisor. At the hearing, Carrick did not recall approaching Middleton about becoming a line supervisor.

Q [by McKinley Air] And you didn't participate in any part of that employee getting a raise?

A Some of the raises were based on the training because when I did interviews, Mr. Armen told me, you know, they start at "x" amount and whenever they got checked off on airlines or trained adequately on airlines where they could do it by themselves, they would get a 50 cent raise.

Q Okay.

A After they were checked off on aircraft towing, farm, a fuel farm as in filling the trucks, doing quality control such as supping the farm and that type of stuff and ramp duties, whenever we felt they were adequate enough to do all that by themselves, they would get another 50 cent raise.

Q Did you recommend any employees receive a raise because of their qualifications and abilities?

A Yes.

The record does not otherwise establish whether employees received raises as a result of Carrick's recommendations. Hershey testified that he recommended to a management official that an employee on his shift "had gone through a series of airline tests, he'd gotten to a point where he was qualified for a raise."<sup>17</sup> A few weeks later, the employee actually received a raise. Branch testified that an employee on his shift – Thomas Ahart – received a raise and that he was not consulted about it. Middleton had no knowledge of any employees on his shift receiving raises and stated that he does not evaluate employees.

Brindack testified that all line supervisors have the authority to discharge line service technicians, but that none of the line supervisors have discharged a line service technician since he has been general manager. He did not know whether Mikes had ever discharged an employee.

Employer's exhibit 8 is a disciplinary warning notice signed by Branch, and dated January 11, indicating that line service technician Roger Brooks was being discharged for

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<sup>17</sup> Hershey could not recall whether he had recommended the raise to Brindack or the individual who preceded him.

“call[ing] off too many times, during his probation period.” Branch testified that he told McKinley Air vice president Bob Dexter that Brooks called off a lot, was always on the phone, and did not care about the job. Branch asked Dexter what he should do, and Dexter told Branch to get rid of him. Branch filled out the disciplinary warning notice and fired Brooks. The form does not indicate that Dexter instructed Branch to fire Brooks.<sup>18</sup> Branch further testified that in June or July, Brindack had told him that only he, Brindack, had authority to discharge line service technicians.<sup>19</sup>

Carrick testified that during a monthly supervisor meeting, he suggested that line service technician John Morehart be terminated.<sup>20</sup> Carrick stated that the other line supervisors present at the meeting – Middleton, Branch and Hershey – also agreed that Morehart should be discharged.<sup>21</sup> Carrick also told Brindack, in one-on-one conversations, that Morehart should be discharged. However, at the time of the hearing, Morehart remained employed by McKinley Air.

Brindack testified that all line supervisors have authority to discipline line service technicians, but that since he became general manager, no line supervisors have disciplined line service technicians without first consulting him.

Middleton testified that he has the authority to discipline line service technicians, but that he does not know how he obtained that authority.<sup>22</sup> Several line service

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<sup>18</sup> Brindack testified that he did not know whether Branch was instructed by McKinley Air management to fire Brooks.

<sup>19</sup> Branch also testified that he recommended to Brindack that line supervisor Mikes either be discharged or moved to part-time, but that his recommendation was not followed.

<sup>20</sup> Carrick testified that discussions regarding discharge, discipline or promotion were atypical of the supervisor meetings. Typical topics were day-to-day issues such as employee complaints and morale.

<sup>21</sup> Mikes generally did not attend supervisor meetings. Hershey testified that Brindack asked each line supervisor for input regarding Morehart. Hershey could not recall whether any line supervisors suggested that Morehart be terminated. Middleton testified that he attended the meeting, but could not remember whether Carrick or Brindack suggested that Morehart should be terminated.

<sup>22</sup> At the hearing, McKinley Air’s attorney asked Middleton whether he had the authority to “discipline employees.” Middleton responded “yes.” The record does not further establish Middleton’s role in the discharge process.

technicians on Middleton's shift have been disciplined since he became a line supervisor, but Middleton neither issued the discipline nor recommended the discipline. For example, line service technician Kerman was disciplined for failing to sump an aircraft prior to re-fueling. Petitioner's exhibit 1 is a disciplinary warning notice issued to Kerman on August 25, signed by Brindack and initialed by Middleton as a witness. Middleton did not learn of Kerman's infraction until after Brindack did and was not consulted about whether Kerman should be disciplined. On cross-examination, Middleton stated that he would have issued discipline to Kerman had he known of the infraction before Brindack. On re-direct examination, Middleton stated that he would have consulted with Brindack before issuing any discipline to Kerman. In addition to Kerman, two other line service technicians on Middleton's shift – Richard Donze and Brian Spence – were disciplined for failing to apply fuel mats to an airplane's wing. Middleton served as a witness for their discipline, but had no input on whether they should be disciplined.

Branch testified that he has not disciplined any employees on his shift, and could not recall any employees on his shift being disciplined since he has been a line supervisor. Branch told Brindack that line service technician John Baxter was a slow worker and needed improvement. Branch testified that he may have told Brindack that Baxter was not cut out for the job. Employer's exhibit 7 is a disciplinary warning notice, signed by Brindack, and dated May 2. The notice states that Branch feels that Baxter is too slow for the job, that Branch and Brindack counseled Baxter on improving his performance, that the form was completed for "informational purposes only," and that no disciplinary action was taken. Baxter quit with no disciplinary action being taken against him.

Hershey's testimony regarding his authority to fill out disciplinary forms and/or discipline employees is ambiguous. He testified as follows:

Q [Petitioner] Discipline employees?

A To a certain extent.

Q Would you explain that?

A If it comes to the point where there is a real problem, my position is to talk to them first. If that doesn't work, then I get together with the general manager and we discuss what needs to be done. I'm not in favor o[f] writing people up, unless it's absolutely necessary.

Q Have you ever written anybody up?

A No.

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Q [McKinley Air] Again, just so we're clear on this, do you think you have the authority to write people up, to fill out these employee disciplinary forms?

A Do I think I have the authority to do that?

Q Yes.

A Uh – in looking back, over the past, yes. Up until last week, no, I didn't know that I had that authority.

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Q [Petitioner] You testified that – in response to Mr. Freeman's questions, you think you have the authority to write an employee up. I believe your testimony, your response was "not in the past, up until last week?"

A Well, I wasn't aware of this. There is no – not that I can find at least, there is no guidelines for supervisors at McKinley Air, as far as here's what it is, your job description. Uh – if – if it exists, I haven't seen it.

Q Okay. So what happened last week that makes you now think differently about your authority?

A Uh – just being here and listening to the testimony of Troy.

Q Is it fair to say then, when you heard Mr. Brindack's testimony, then you had – that – that introduced you to authority you didn't know, you've never heard you had or he'd never conveyed to you, prior to last week's testimony?

A I was under the understanding that I could write people up. As far as the other things, I didn't know anything about them. I chose not to write people up, that's the way I handled that.

Hershey also testified that an employee on his shift, David Morehart, has been "disciplined" since he became a line supervisor. Morehart was not a line supervisor, but acted as if he was one. Hershey attended a supervisor meeting where Morehart was discussed. Brindack asked Hershey, as well as the other line supervisors at the meeting, for an opinion on what to do with Morehart. Hershey could not recall his exact response, testifying "I know it was – uh, let's try to make the man understand that he's not a supervisor, somehow, and, you know, knock it off."<sup>23</sup> The record does not indicate whether any adverse action was taken against Morehart for acting like a line supervisor.

Carrick testified that he does not have authority to discipline employees, but that Armen told him to write employees up in the past, when there was no general manager. Carrick stated that since McKinley Air has had a general manager, line supervisors have not written employees up; rather, the general manager has done that.

Employer's Exhibit 3 is a disciplinary warning notice signed by Mikes as "supervisor" regarding line service technician Greg Carr. Brindack testified that the form was filled out for informational purposes and that no disciplinary action was taken against Carr as a result of the notice. Brindack further testified that he thinks Mikes has "sent people home once or twice, not this go around as supervisor but in years gone by."

Employer's Exhibit 9 contains 23 employee discipline forms dated between July of 1994 and April of 2000.<sup>24</sup> The forms were issued by former line supervisors when Brindack was not general manager.<sup>25</sup> These forms are summarized as follows:

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<sup>23</sup> As discussed above, Carrick recommended that Morehart be terminated.

<sup>24</sup> During the hearing, the Petitioner objected to the admission of Employer's Exhibit 9, arguing that it is not relevant. I have determined that the hearing officer properly admitted the exhibit.

<sup>25</sup> One of the forms, dated January 24, 1996, was signed by both David Crawford and Mikes on the line designated for "supervisor."

- Date: June 12, 1995 Line service technician: Steve C. Supervisor: Jim Hermann. Infraction: defective or improper work. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: June 6, 1995. Line supervisor: Dean Marco Supervisor: Jim Hermann. Infraction: improper conduct. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: July 11, 1994. Line service technician: Sam Lane Supervisor: Jim Hermann. Infraction: insubordination. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: July 29, 1999. Line service technician: Jason Dungan. Supervisor: Pete Welden. Infraction: unreported absence. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: July 3, 1999. Line service technician: Jason Dungan. Supervisor: Pete Welden. Infraction: tardiness. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: July 2, 1999. Line service technician: Jason Dungan. Supervisor: Pete Welden. Infraction: tardiness. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: February 12, 1995. Line service technician: Stephen J. Cincinnati. Supervisor: Pete Welden. Infraction: destruction of company property. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: February 7, 2000. Line service technician: Robert Daley. Supervisor: William Blackmar. Infraction: destruction of company property (2<sup>nd</sup> time). Discipline: verbal warning; sent home. Consequence of repeat violations: discharge.
- Date: April 6, 1998. Line service technician: Scott Conley. Supervisor: William Blackmar. Infraction: improper conduct; defective or improper work; other Discipline: discharge. Consequence of repeat violations: N/A.
- Date: March 13, 1998. Line service technician: Scott Conley. Supervisor: William Blackmar. Infraction: destruction of company property. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: April 21, 2000. Line service technicians: Johnny Jones; Jason Dryden. Supervisor: Mid Octavio. Infraction: "...left pin in the towing position rather than changing it to a vertical...position..." Discipline: verbal warning; written warning. Consequence of repeat violations: N/A.



- Date: April 14, 2000. Line service technician: Jason Dryden. Supervisor: Mid Octavio. Infraction: tardiness. Discipline: verbal warning; written warning (1<sup>st</sup>); written warning (2<sup>nd</sup>). Consequence of repeat violations: N/A.
- Date: April 12, 2000. Line service technician: Jason Dryden. Supervisor: Mid Octavio. Infraction: tardiness. Discipline: verbal warning; written warning (1<sup>st</sup>). Consequence of repeat violations: N/A.
- Date: December 15, 1999. Line service technician: Jason Dryden. Supervisor: Mid Octavio. Infraction: sleeping on the job. Discipline: verbal warning (5<sup>th</sup>). Consequence of repeat violations: N/A.
- Date: December 15, 1999. Line service technician: Jason Dryden. Supervisor: Mid Octavio. Infraction: “will not listen to supervisors orders.” Discipline: 4<sup>th</sup> warning. Consequence of repeat violations: N/A.
- Date: November 6, 1999. Line service technician: Jason Dryden. Supervisor: Mid Octavio. Infraction: insubordination. Discipline: 3rd written warning. Consequence of repeat violations: “[t]his is his last chance.”
- Date: October 29, 1999. Line service technician: Jason Dryden. Supervisor: Mid Octavio. Infraction: overfueled aircraft. Discipline: verbal warning. Consequence of repeat violations: N/A.
- Date: August 4, 1996. Line service technician: Steve Cincinnati. Supervisor: David Crawford. Infraction: left shift without filling truck. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: August 4, 1996. Line service technician: Darryl Corrin. Supervisor: David Crawford. Infraction: left shift without filling truck. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: July 11, 1996. Line service technician: Daryl Corrin. Supervisor: David Crawford. Infraction: Failure to obey orders. Discipline: N/A. Consequence of repeat violations: N/A.
- Date: April 30, 1996. Line service technician: Skip Cross. Supervisor: David Crawford. Infraction: failure to obey orders. Discipline: sent home. Consequence of repeat violations: N/A.
- Date: March 30-31, 1996. Line service technician: Darryl Corrin. Supervisor: David Crawford. Infraction: other. Discipline: N/A. Consequence of repeat violations: N/A.

- Date: January 24, 1996. Line service technician: Skip Cross. Supervisor: David Crawford/Don Mikes. Infraction: violation of safety rules. Discipline: N/A. Consequence of repeat violations: N/A.

In addition, Employer's exhibit 4 is a disciplinary warning notice issued to line service technician Walt Brunoni, dated February 16, 2000, and signed by former line supervisor Mid Octavio. Carrick's name is written in the upper right-hand corner of the document. The document indicates that Brunoni told Octavio that Carrick was his supervisor, and that he would listen to Carrick but not Octavio. The form does not indicate if any disciplinary action was taken against Brunoni, but indicates that the consequence for a repeat violation will be a three-day suspension. Octavio wrote on the form: "Ive [sic] had it with Walts [sic] smart allec [sic] mouth, he's been showing zero respect for me. Him going to 2<sup>nd</sup> shift is a wise decision. I would appriciate [sic] it Mr. Armen if you would straighten Walt out on this matter. (Before I throw him out the door myself)." Brindack testified that, to the best of his recollection, McKinley Air had no general manager at the time. Brindack testified that each employee discipline form is placed in the affected employee's personnel file. He thought Carrick and Branch replaced former line supervisors Pete Welden and Mid Octavio, respectively. In addition, Brindack stated that the duties of line supervisors have remained about the same during his entire tenure with McKinley Air.

Brindack testified that line supervisors determine which employees work overtime. Carrick, on the other hand, testified that he had the authority to assign overtime during the period when there was no general manager, but that when Brindack assumed the general manager position, Brindack told him that he must clear all overtime through him. For example, in July, Carrick asked line service technician Brian Spence if he would like to substitute for him on a day he would not be at work. Later, Brindack informed Carrick that Spence would not be able to work that day because Armen would not authorize the overtime; rather, Brindack would fill in that day if needed. Branch and

Middleton similarly testified that they need to obtain management approval before assigning overtime. Middleton testified that he signs employee time cards to verify that employees have been authorized for overtime, but that management officials actually authorize the overtime.

Brindack testified that line supervisors determine which line service technicians stay and which ones go if there is an overage of employees at work. Middleton testified that he would check with Brindack before sending employees home early. Branch testified that he would never send employees home early without first checking with Brindack, because “if suddenly we picked up and now we’re shorthanded, it would be my neck on the line.” Brindack provided an example of a situation in which Brindack authorized Branch to send employees home early. One Monday, there were too many people on and Brindack contacted Branch to send employees home. Branch testified that he took volunteers, and that he and the line service technicians on the shift agreed that employees would be sent home in alphabetical order. Hershey testified that if there is an overage of employees, either Brindack or Armen usually calls and tells him to see if any employee wants to go home. He takes volunteers to determine which employee to send home. He stated he has never made a decision to send someone home on his own. Carrick testified that he does not send employees home without checking with Brindack. Carrick determines which particular employee to send home by taking volunteers. If no one volunteers, he chooses the person with the least seniority to go home unless that person had already gone home the day before.

The record indicates that line supervisors do not make up schedules for line service technicians, who work a fixed schedule. Branch testified that he determined when employees came in to work during the first three weeks of Brindack’s tenure as general manager, but then Brindack “took over the schedule.” Branch testified that he and the employees decide who works which airlines on a particular day by mutual agreement (assuming the particular employee is “checked off” on airlines). He stated that

third-shift employee Greg Carr called off about May or June. Branch called Brindack to ask who should take his place, and Brindack told him to assign employee John Morehart. On other occasions when Carr called off, Brindack informed him to split up the shift. Hershey stated that he is not responsible for making out work schedules. Carrick stated that generally employees work on a fixed schedule. When there was no general manager, Carrick actually made out the schedule, because Armen had asked him to do that work. He no longer makes out schedules since there has been a general manager.

Brindack testified that when he was a line supervisor, he had authority to assign work and did so. He also stated that assigning work is a duty exercised by line supervisors on a daily basis. Branch, Carrick and Middleton testified that they do not usually assign individual line service technicians to do particular jobs. Rather, the employees come to work knowing what their job entails and just do it. Hershey testified that most employees are “self-starters” and do not need to be told what to do, but that occasionally he needs to give an employee a “gentle push,” i.e. he talks to the employee to see if there is a misunderstanding and, if so, explains the correct way to do the job. Hershey stated that if an employee needs a “heavier hand,” he calls Brindack. Carrick also testified that during “down time,” he asks employees to perform tasks such as cleaning the hangar floor or picking up trash in the parking lot. Brindack testified that Mikes assigns employees to particular tasks.

Branch, Middleton and Carrick testified that it was their job to oversee the work of the line service technicians and make sure that they are doing their jobs correctly.<sup>26</sup> If something is done wrong, they tell the employee how the job should be done and see that it is done correctly. As an example, Branch stated that while he was walking by a plane, he noticed that a line service technician had put the fuel cap on backwards. Branch corrected the problem and explained the proper way to put on the fuel cap. The record

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<sup>26</sup> Brindack also testified that Mikes oversees the work of line service technicians on his shift.

also indicates that if anything out of the ordinary occurs on their shift, line supervisors contact Brindack. For example, there was a fuel spill during Middleton's shift. Middleton handled the incident without contacting Brindack immediately. Later, Brindack approached Middleton and asked why he had not been called. Middleton stated that he was almost written up for not contacting Brindack. Branch and Carrick testified that they must contact Brindack for anything out of the ordinary, such as accidents, call-offs and overtime issues. Branch specifically testified that Brindack had told him that he does not like surprises.

Brindack testified that the line supervisors have the authority to adjust employee grievances and do so. Employees are directed to take their grievances to their line supervisor, and if not resolved, to then take their grievances to Brindack. On several occasions, line service technician John Morehart brought grievances directly to Brindack, who would tell him to talk to his line supervisor, Branch, instead. Morehart's grievances typically involved "employee work ethic or what he feels is abuse of equipment." Branch also testified regarding the Morehart situation. He stated that Morehart went directly to Brindack to discuss employees putting the oil funnel on top of a fuel mat, resulting in the fuel mat getting oily. Brindack came to Branch and asked him if he was aware of the problem, and told him that Morehart was supposed to go to Branch first. Branch did not recall any other instances where Morehart, or any other employee on his shift, came to him to discuss a problem.

Middleton stated that he has not had any situations where he has had to handle employee grievances. Hershey stated that there have been situations where there was a disagreement between employees, and that usually he lets the employees work it out. If a fight breaks out, he would call Brindack or Armen and report that the situation "is getting out of hand." He testified that this has never occurred on his shift. Carrick testified that morale issues and employee complaints are discussed at the monthly supervisor meetings. Brindack stated that he knew of no grievances between employees on Mikes' shift.

## II. ANALYSIS

Section 2(3) of the Act excludes from the definition of “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a supervisor as follows:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well established that the possession of any of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status on the employee, provided that the authority is exercised with independent judgment on behalf of management and not in a routine manner. Clark Machine Corporation, 308 NLRB 555 (1992); Bowne of Houston, Inc., 280 NLRB 1222, 1223 (1986). Persons with the power “effectively to recommend” the actions described in Section 2(11) are supervisors within the statutory definition. See, e.g., Entergy Systems & Service, 328 NLRB No. 125 (1999). In addition, the burden of proving supervisory status rests on the party asserting such status. NLRB v. Kentucky River Community Care, Inc., 121 S. Ct. 1861 (2001); Bennett Industries, Inc., 313 NLRB 1363 (1994).

Mere assertions of authority are not sufficient to establish supervisory status. As stated succinctly in Chevron U.S.A., 309 NLRB 59, 62 (1992):

[T]he Act requires “evidence of actual supervisory authority, visibly translated into tangible examples demonstrating the existence of such authority.” Oil Workers v NLRB, 455 F.2d 237, 243 (D.C. Cir. 1971). Although “[a] supervisor may have potential powers, ... theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest powers.” Id. at 243. ... Additionally, the evidence must “fairly” show that “the alleged supervisor knew of his authority to exercise” the supervisory power. NLRB v. Tio Pepe, Inc., 629 F.2d 964, 969 (4<sup>th</sup> Cir. 1980). (Alterations in original, some citations omitted).

Furthermore, the record must also show that the “individual[s] in question consistently display true independent judgment in performing one or more of the enumerated functions in Section 2(11) of the Act.” Amperage Electric, Inc., 301 NLRB 5, 13 (1991). Merely following pre-established rules and procedures with respect to the foregoing criteria, without the exercise of independent discretion, is not using independent judgment. The exercise of some supervisory authority in a merely routine, clerical, perfunctory or sporadic manner also does not confer a supervisory status.

It is also well settled that in establishing that individuals possess Section 2(11) supervisory authority, that conclusory statements, without specific supporting evidence in the record, are insufficient to establish supervisory authority. Custom Mattress Manufacturing, Inc., 327 NLRB 111, 112 (1998)(citing Sears, Roebuck & Co., 304 NLRB 193 (1991)); Ohio Power Co. v. NLRB, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 335 US. 899 (1949). Additionally, the Board has noted that “when evidence is inconclusive on a particular indicia of supervisory authority, the Board will find that supervisory status has not been established on the basis of those indicia.” Custom Mattress Manufacturing, Inc., *supra* at 112 (citing Phelps Community Medical Center, 295 NLRB 486, 490 (1989); The Door, 297 NLRB 601, fn. 5 (1990)). The Board has a duty not to construe the statutory language of Section 2(11) too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act. Hydro Conduit Corp., 254 NLRB 433, 437 (1981).

The Board has explained, “In enacting Section 2(11) Congress emphasized its intention that only truly supervisory personnel vested with ‘genuine management prerogatives’ should be considered supervisors, and not ‘straw bosses, leadmen, set-up men and other minor supervisory employees.’” Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985), *enfd.* in relevant part 794 F.2d 527 (9<sup>th</sup> Cir. 1986). The typical lead worker situation that the Board has consistently found does not confer supervisory status

“involves a skilled or experienced employee directing the work of lesser skilled employees.” American Book Division, 214 NLRB 413, 417 (1974).

**A. McKinley Ground Services, LLC (8-RC-16264)**

Applying the above general principles to the facts of this case, I find sufficient evidence to warrant a finding that Jeffrey Cook’s duties involve the exercise of supervisory authority.

The record in this case reveals that Cook has the authority to hire ground handlers. The record indicates that Cook has hired two ground handlers, that he was the only Ground Services official involved in hiring them, and that he used independent judgment in making those hiring decisions. In addition, the record does not indicate that Cook’s authority to hire was exercised sporadically, or that he has since lost the authority to hire. Although Brindack was out of town when Cook hired Tadaro, the record indicates that Brindack was available when Cook hired Flaughers. Thus, the record does not indicate that Cook merely substituted for Brindack during isolated instances when Brindack was not available to hire employees. Moreover, I note that Cook has only been employed by Ground Services for 1 ½ to 2 years, and that there are only 5 ground handlers. Thus, the fact that Cook has hired only two employees, one of whom remains employed, and that Brindack hired the other four current employees, does not indicate that Cook’s exercise of hiring authority was sporadic or temporary.

The existence of supervisory authority, rather than its exercise, is determinative. See Groves Truck & Trailer, 281 NLRB 1194, 1198, fn. 1 (1986). In determining whether the supervisory power does in fact exist, however, the Board looks for concrete examples of the exercise of the authority. See Custom Mattress Manufacturing, Inc., supra. Under the facts of this case, I have determined that Ground Services has presented sufficient evidence to establish that Cook possesses the authority to hire ground handlers.

Although it is clear that the presence of only one of the indicia listed in Section 2(11) is sufficient to establish supervisory status, the record also indicates that Cook has



the authority to discipline and suspend ground handlers, and that he has in fact disciplined and suspended ground handlers. Specifically, Cook disciplined and suspended ground handler Howard for excessive tardiness. The record indicates that Brindack did not know of these incidents until Howard received the written warning and suspension. Thus, the record demonstrates that Cook used independent judgment in exercising his authority to discipline and suspend Howard.

Accordingly, I have concluded that Cook is a supervisor as defined in Section 2(11), and thus should be excluded from the petitioned-for unit.

**B. McKinley Air, Inc. (8-RC-16263)**

I find that McKinley Air has not sustained its burden of producing sufficient evidence to warrant a finding that the line supervisors' duties involved the exercise of supervisory authority.

McKinley Air does not contend that the line supervisors have the independent authority to transfer, lay off or recall employees, or the authority to effectively recommend such action. McKinley Air does contend that the line supervisors have the independent authority to hire, suspend, discipline, promote, reward, discharge, adjust grievances, assign work and direct employees, or at least to effectively recommend such action. I shall consider each factor in turn.

While McKinley Air contends that the line supervisors possess the authority to hire line service technicians, the record does not establish that they currently possess that authority. No current line supervisors have hired employees since Brindack has been general manager. Middleton, Mikes, Hershey and Branch have never hired an employee. The record establishes that Carrick was involved in the hiring of two employees: Donze and Carr. The record clearly establishes that Armen instructed Carrick to hire Donze, even though Carrick had recommended that Donze not be hired. Thus, it is clear that Carrick's recommendation regarding the hire of Donze was not "effective."

On the other hand, the record suggests that Carrick used independent judgment in hiring Carr. However, the record indicates that Carrick's exercise of hiring authority was temporary and sporadic. In this connection, it is particularly important to note that there was no general manager at the time Carr was hired. Armen had specifically instructed Carrick to interview applicants because he was too busy, implicitly because there was no general manager. When viewed in this context, the record indicates that Armen's instructions to Carrick applied only while there was no general manager. See Springfield Air Center, 311 NLRB 1151, 1154 (1993)(individual who interviewed and effectively recommended the hire of one applicant during short stint as "director of maintenance," not a supervisor as of the date the "director" duties were assumed by someone, and the individual returned to his previous duties as mechanic). Since Brindack has been general manager, Carrick has not been involved in the hiring process, and Brindack has hired at least three line service technicians. Other changes in Carrick's responsibilities that occurred once Brindack became general manager further bolster the inference that Carrick's authority to hire was restricted to the period when there was no general manager. For example, Carrick testified that when there was no general manager, he had the authority to assign overtime, make employee work schedules, and sign for employee uniforms when they were dropped off at McKinley Air, but that he no longer had those responsibilities after Brindack became general manager.

Although the record establishes that line supervisors exercised the authority to hire in the past, it is certainly not clear that current line supervisors possess that authority. Brindack testified that he was initially hired by Jim Hermann, a former McKinley Air line supervisor. However, the record does not establish that Hermann used independent judgment in hiring Brindack.<sup>27</sup> Brindack also testified that he hired some employees

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<sup>27</sup> In addition, Brindack was hired several years ago, in 1994. Other than Brindack's testimony, McKinley Air has provided no evidence indicating that line supervisors' authority has remained constant since 1994.

when he was a line supervisor and that he did not need the approval of any management official to hire employees. However, at the time, McKinley Air also performed the work currently performed by Ground Services, which did not yet exist. Considering that Air Services' operations and the work performed by its employees were significantly different than they are now, an inference can be drawn that line supervisors' responsibilities in hiring were different as well.<sup>28</sup> A line supervisor's hiring of temporary employees over four years ago does not, without more, establish that current line supervisors have Section 2(11) hiring authority. This is not to say that the mere passage of time without line supervisors exercising supervisory authority necessarily means that the authority no longer exists.<sup>29</sup> However, in this case, the hiring of Brindack as general manager is a specific intervening event which explains how the authority of line supervisors may have changed over time. Therefore, I conclude that McKinley Air has not met its burden of proving that the line supervisors currently have the authority to hire employees.

The record does not establish that the current line supervisors have ever suspended or disciplined employees while using independent judgment. Although three employees on Middleton's shift have been disciplined since he became a line supervisor, Middleton neither disciplined them nor provided any input as to whether they should be disciplined. Rather, he served as a witness while Brindack or another manager administered their discipline. See Necedah Screw Machine Products, 323 NLRB 574 (1997)(signatures on disciplinary form not effective recommendation, but rather for witness purpose). Middleton's testimony that he would have disciplined Kerman had he

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<sup>28</sup> Moreover, Brindack characterized the employees he hired as primarily "college kids," temporary employees. The hiring of temporary employees, by its nature, arguably carries less weight and connotes less responsibility than the hiring of permanent employees.

<sup>29</sup> Cf. Beverly Enterprises – Massachusetts, Inc. v. NLRB, 165 F.3d 960, 963 (D.C. Cir. 1999)("[I]n a given situation, the failure to exercise supervisory authority may indicate only that circumstances have not warranted such exercise. In such a case, it may quite be possible to establish that real authority is possessed, despite lack of exercise").

learned of Kerman's infraction prior to Brindack is undercut by his later testimony that he would have consulted with Brindack prior to issuing any discipline.<sup>30</sup> While McKinley Air is correct in pointing out in its brief that Middleton stated under oath that he has the authority to "discipline" employees on his shift, the record does not indicate what Middleton meant by "discipline." Carrick testified that he wrote up employees in the past, but that Armen had instructed him to do so at a time when there was no general manager. Further, the record does not establish that Carrick's write-ups actually affected the employees' employment history in any way. See North Shore Weeklies, Inc., 317 NLRB 1128, 1130 (1995)("the authority of the press supervisors to give oral warnings which carry no formal weight does not demonstrate the exercise of supervisory authority").

Although Branch reported to Brindack that line service technician Baxter was a poor employee and that he did not think Baxter was cut out for the job, no disciplinary action was taken against Baxter. In addition, although Hershey testified that line service technician Morehart, who works on Hershey's shift, was "disciplined," the record does not establish whether Morehart was actually disciplined. Even assuming, arguendo, that Morehart was actually disciplined, Hershey's suggestion at the supervisory meeting, "to make [Morehart] understand that he's not a supervisor, somehow, and...knock it off," is not an effective recommendation of discipline. See MJ Metal Products, Inc., 325 NLRB 240 (1997)(employee's recommendation that "something be done" about another employee was not an effective recommendation of discipline as no specific recommendation was ever made and the employer provided no explanation as to how the ultimate decision in deciding to discipline the employee was reached).

McKinley Air provided evidence that past line supervisors have disciplined employees. However, this evidence is insufficient to establish that the current line

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<sup>30</sup> In any event, his testimony in this regard is merely his opinion and is not a concrete example establishing that the requisite authority exists.

supervisors have authority to independently issue discipline, or to effectively recommend discipline. Employer's Exhibit 9 contains copies of 23 employee discipline forms dated between July of 1994 and April of 2000. The vast majority of the forms, however, do not indicate on their face whether any discipline was issued, and the record does not otherwise establish whether discipline was issued. Authority to submit reports on employee conduct that are merely records of instruction or are investigated independently does not establish supervisory status. Tree-Fiber Co., 328 NLRB No. 51 (1999). Brindack's testimony that the forms were placed in the affected employees' respective personnel files does not, by itself, establish that they faced any adverse employment consequences. The few forms in Employer's exhibit 9 that indicate that the employees were actually disciplined do not, on their face, establish whether the line supervisors exercised independent judgment in issuing the discipline, and the record does not otherwise indicate that independent judgment was exercised. Employer's Exhibit 4 also does not, on its face, indicate whether any adverse employment action was taken against Brunoni.<sup>31</sup> Although the form indicates that Brunoni would face a three-day suspension for a repeat violation, the record does not establish whether line supervisor Mid Octavio used his independent judgment in completing the form. Moreover, Octavio's comments appear to be addressed to Armen, and although Octavio recommends that Armen "straighten Walt out on this matter," there is no specific recommended discipline. See MJ Metal Products, Inc., supra. The record provides no additional information with regard to Brunoni.

The record does not establish that current line supervisors have the authority to independently promote or reward employees. McKinley Air contends that Mikes recommended the promotion of line service technician Murray Anderson. However, the

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<sup>31</sup> Octavio's comment that "[Brunoni] going to 2<sup>nd</sup> shift is a wise decision" is ambiguous in that it does not indicate whether Brunoni had already been transferred to the second shift or whether Octavio was suggesting that Brunoni be transferred to the second shift, much less whether any such discipline was a result of Octavio's action.

record establishes that Mikes “promoted” Anderson only in the sense that he spoke highly of him, and that Brindack informed Mikes that he would take Mikes’ comments into consideration. Anderson did not receive a promotion or a raise. Such evidence is clearly insufficient to establish that Mikes possesses this statutory indicia of supervisory status.

Although Middleton testified that Carrick recommended that he be promoted to line supervisor, Carrick testified that he expressed his reservations about Middleton to upper management because of Middleton’s lack of experience. Despite Carrick’s reservations, Middleton was promoted anyway. In cases where recommendations concerning reward “were not shown to be effective or to result in personnel action being taken,” the Board has made a determination of non-supervisory status. See Hawaiian Telephone Co., 186 NLRB 1 (1970).

Carrick testified that he recommended that certain employees receive raises, and that certain of those employees did receive raises. However, the record does not sufficiently explain the process by which a decision to “follow” those recommendations took place to warrant a determination that Carrick’s recommendations were, in fact, effective recommendations. See Children’s Farm Home, 324 NLRB 61 (1997) (“The Board has consistently applied the principle that authority to effectively recommend generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed”); Custom Mattress Manufacturing, Inc., *supra* at 111; F.A. Bartlet Tree Export Co., 325 NLRB 243, 244-245 (1997). Further, when there was no general manager, Armen specifically told Carrick that line service technicians were to receive pay raises in 50-cent increments depending on how many airline functions they were “checked off” on. Thus, the record indicates that McKinley Air had a set procedure as to when a line service technician was to get a pay raise, as well as the amount of the raise. This diminishes the “independent judgment” required of Carrick in making such recommendations. See generally, Chevron

Shipping Co., 317 NLRB at 381 (use of independent judgment and discretion circumscribed by superior's standing orders and company's operating regulations). Likewise, Hershey's testimony that he recommended an employee be given a pay raise because of the employee's performance on airline tests was not an "effective recommendation."

The record also does not establish that line supervisors have authority to discharge, or effectively recommend the discharge, of an employee. Vice President Bob Dexter instructed Branch to discharge line service technician Brooks. Branch clearly did not make an effective recommendation to discharge Brooks, but merely reported to Dexter his opinion of Brooks and asked Dexter what he should do regarding Brooks. In addition, Carrick specifically recommended to Brindack that Morehart be discharged, but Morehart was not discharged. Moreover, although Employer's Exhibit 9 contains an employee discipline form, dated April 6, 1998, indicating that line service technician Conley was discharged for various infractions, the form does not indicate whether the line supervisor used independent judgment in discharging or recommending the discharge of Conley. Rather, because McKinley Air president Armen witnessed the infraction along with the line supervisor, an inference can be drawn that the line supervisor did not independently discharge or effectively recommend the discharge of Conley, but rather that Armen made the decision.

The record does not establish that line supervisors have the authority to adjust employee grievances. The record indicates that employees have been directed to take grievances to line supervisors first, and then to Brindack. However, the record did not establish that any line supervisors have adjusted employee grievances. Branch acknowledged that Morehart had first complained to Brindack about issues such as his fellow employees' work ethic, and that Brindack subsequently informed Branch that Morehart was supposed to come to Branch first. However, the record does not indicate whether Branch ever actually remedied Morehart's complaints or effectively

recommended that Morehart's complaints be remedied. Although the record suggests that Branch may have been a conduit for information regarding employee complaints, it does not establish the process by which employee complaints are actually resolved. Hershey testified that if employees on his shift were to have a disagreement, he would allow them to work it out themselves. He further testified that if things "got out of hand," i.e. a fist fight broke out, he would contact management. Thus, Hershey's testimony does not indicate that he exercised independent judgment in adjusting employee grievances. Carrick testified that morale issues and employee complaints were among the typical topics of discussion at the monthly supervisory meetings, but the record does not indicate whether line supervisors effectively recommended to Brindack how these grievances could be adjusted, or whether they were even adjusted.

The record does not establish that line supervisors have the authority to independently assign work and responsibly direct employees. The line supervisors testified that they have to obtain approval from a management official before assigning overtime. To the extent line supervisors initial employee time cards, this function is ministerial in nature and does not require the use of independent judgment.

Also, line supervisors do not schedule employees' work. The employees work on a fixed schedule. In addition, the record indicates that when there is an overage of line service technicians, the line supervisors do not exercise independent judgment in deciding to send employees home. The record indicates that either Brindack or Armen makes the decision that employees need to go home and that the line supervisors determine which particular employee to send home. However, the record indicates that the line supervisors make their decision either by asking for volunteers or following alphabetical order or seniority. This does not demonstrate the use of independent judgment.

While line supervisors generally oversee line service technicians to make sure that tasks are completed correctly, the Board has held that routine assignment and direction of



work does not constitute supervisory authority. PECO Energy Co., 322 NLRB 1074 (1997); Byers Engineering Corp., 324 NLRB 740 (1997). The Supreme Court in Kentucky River intimated that individuals who merely direct the performance of discrete tasks rather than directing other employees have not engaged in responsible direction so as to confer supervisory status. 121 S. Ct. at 1871.

In the instant case, the record indicates that line supervisors essentially perform their work independent of direction from line supervision. See Chevron Shipping Co., 317 NLRB at 381 (“the officers and crew generally know what functions they are responsible for performing and how to accomplish such tasks”); Highland Superstores, Inc. v. NLRB, 927 F.2d 918, 921 (6<sup>th</sup> Cir. 1991)(leadmen did not use independent judgment in assigning work or directing employees where they were given a schedule of incoming and outgoing trucks each day, told employees which trucks to unload, and allocated the time required to perform such tasks; rather, the “work was so routine that employees would often consult the schedule, not the leadmen, for a new assignment”).<sup>32</sup>

The record also establishes that if anything occurs out of the ordinary, such as a fuel spill, equipment damage, or an accident, the line supervisors must contact Brindack, who testified he can always be reached by phone or pager. See Chevron Shipping Co., 317 NLRB at 381 (“although the contested licensed officers are imbued with a great deal of responsibility, their use of independent judgment and discretion is circumscribed by the master’s standing orders, and the Operating Regulations, which require the watch officer to contact a superior officer when anything unusual occurs or when problems occur”).

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<sup>32</sup> Employer’s Exhibit 4, a disciplinary warning notice issued by former line supervisor Mid Octavio to line service technician Walt Brunoni on February 16, 2000, suggests that Brunoni believed Carrick was his supervisor and that Brunoni would “listen to” Carrick. At most, this is a secondary indicia of Carrick’s supervisory status.

Accordingly, I conclude that the line supervisors are not “supervisors” as defined in Section 2(11) of the Act.<sup>33</sup>

I further conclude that the line supervisors share a sufficient community of interests with the line service technicians so they may be included in the petitioned-for unit. See Overnite Transportation Co., 322 NLRB 723 (1996). The record clearly establishes that Carrick, Mikes, Middleton and Branch perform the same work as line service technicians while overseeing the line service technicians’ work. While Hershey spends a smaller proportion of his time performing typical line service technician work than the other line supervisors as a result of his training duties, he still performs line service technician work for a substantial portion of his time. It is clear that the line supervisors receive a wage premium for their added responsibilities, but that alone is an insufficient basis for removing them from the petitioned-for unit. The record establishes that there is a high degree of contact among line supervisors and line service technicians. The line supervisors and line service technicians use the same office and the same parking lot and share the same fringe benefits.

Accordingly, I conclude that the line supervisors should be included in the petitioned-for unit.

The Parties agreed that the following employees are ineligible to vote in the election directed herein in Case 8-RC-16264:

Don J. Armen	-	President
Troy Brindack	-	Manager

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<sup>33</sup> At times, the employees in the petitioned-for unit may have no on-site Section 2(11) supervisor. However, the record indicates that Brindack is available by telephone or pager at all times. Moreover, there is no requirement that a particular unit of employees have a supervisor absent sufficient evidence of one or more of the indicia set forth in Section 2(11). Training School at Vineland, 332 NLRB No. 152, slip op. at 1 & fn. 3 (2000)(group home managers, the highest ranking employees at employer’s group home facilities, not supervisors).

The Parties agreed that the following employees are ineligible to vote in the election directed herein in Case 8-RC-16263:

Don J. Armen	-	President
Robert Dexter	-	Vice President
Troy Brindack	-	Manager
Daniel Rine	-	Mechanic
David Slagle	-	Mechanic
Wendy Currer	-	Office Clerical
Kimberly Adkins	-	Office Clerical
Spring Adamo	-	Office Clerical
Morgan Stevens	-	Office Clerical
Kevin Sibila	-	Pilot
Curtis Carpenter	-	Pilot
David Rynearson	-	Mechanic
Raymond Armstrong	-	Mechanic
Sarah Armen	-	Office Clerical
Laura Seltzer	-	Accountant

As there is no record evidence to the contrary, I accept the Parties' foregoing stipulations and exclude the above-named individuals from the units.

### **DIRECTION OF ELECTIONS**

Elections by secret ballot shall be conducted by the undersigned among the employees of McKinley Ground Services, LLP and McKinley Air, Inc., in the separate bargaining units found appropriate at the times and places set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States

Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **TEAMSTERS LOCAL 348, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

#### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that eligibility lists containing the **full** names and addresses of all the eligible voters must be filed by McKinley Ground Services, LLC, and McKinley Air, Inc., with the Regional Director within 7 days from the date of this decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by October 18, 2001.

Dated at Cleveland, Ohio this 4<sup>th</sup> day of October, 2001.

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Frederick J. Calatrello  
Regional Director  
National Labor Relations Board  
Region 8

177-8500